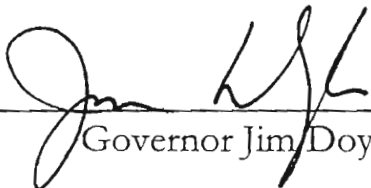
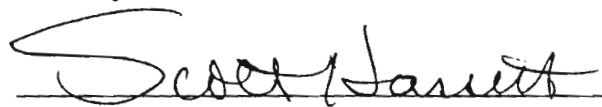




STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

POLICY REGARDING
CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES


Governor Jim Doyle


Secretary Scott Hassett

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15.51

I. Introduction

- A. The various states have a unique legal relationship with each sovereign American Indian Tribal government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and each American Indian Tribal government located within the State of Wisconsin.
- B. Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken, and to implement programs in a collaborative manner. The Wisconsin Department of Natural Resources (DNR) is committed to such government-to-government relations with the federally recognized Tribal governments of Wisconsin (Tribes). The State will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The intent of this policy is to improve the planning and delivery of natural resource management services to Tribal governments, Tribal communities, and Tribal people by developing principles and a process for consultation on natural resource policies in Wisconsin. It is for this purpose that this policy has been developed.
- C. The Department of Natural Resources is a comprehensive state agency, headed by a cabinet-level secretary, which has responsibility for managing the natural resources of the state of Wisconsin. The DNR is also governed by the Wisconsin Natural Resources Board which sets policy for the Department and exercises authority and responsibility in accordance with governing statutory provisions. The DNR is dedicated to the preservation, protection, effective management, and maintenance of Wisconsin's natural resources. It is responsible for implementing the laws of the state and, where applicable, the laws of the federal government that protect and enhance the natural resources of our state. It is the one state agency charged with full responsibility for coordinating the many disciplines and programs necessary to provide a clean environment and a full range of outdoor recreational opportunities for Wisconsin citizens and visitors. The Department's responsibilities are accomplished jointly and cooperatively with other governments including Tribal governments.
- D. Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status and its right to self-government, and self-determination. The Department of Natural Resources respects the fundamental principles that establish and maintain the relationship between Tribes and the DNR and accord Tribal governments the same respect accorded to other governments. The DNR understands, respects, and acknowledges that each tribe has their own laws and ordinances for both on reservation and off reservation concerns.
- E. The DNR and Tribal governments have a history of cooperation and collaboration. The DNR has entered into agreements with Tribes, which include the Lake Superior Fishery, Sturgeon Restoration, air quality monitoring, habitat restoration, water quality standards and cooperative wastewater permitting.
- F. Both the DNR and the Tribes have a responsibility for managing natural resources within their respective jurisdictions. As residents of the State of Wisconsin, Tribal members are equally entitled to the benefit of the state's management services afforded to all residents of the State. It is critical that the Department of Natural Resources administrators and Tribal leadership and their representatives consult with one another to assure that needed services are provided and received in a manner that is both efficient and effective.

II. Objectives

The objectives of this policy are:

- A. To create a collaborative effort (relationship) to improve the quality of the natural resources of the State of Wisconsin through the provision of efficient and effective management of those resources.
- B. To formalize the process and expectations for the DNR to implement a government-to-government relationship and to seek consultation with and participation of representatives of Tribal governments in relevant policy development and program activities.
- C. To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the DNR decision-making process.

III. Guiding Principles

The DNR is committed to improving and maintaining effective government-to-government relations with the Tribes. The development of mutual understanding, with cultural awareness and sensitivity, is necessary to effective consultation on policy and collaboration on program operations. Toward achieving this goal, the DNR shall utilize the following principles in consulting on policy and on program issues with Tribal governments. Integration of these principles into DNR planning and management activities will help produce positive and desired outcomes in managing the natural resources of the State of Wisconsin.

- A. It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, demographics and geography (i.e., where Tribal members are located), and other factors.
- B. Consultation involves respectful and timely communication with Tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.
- C. Working directly with American Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- D. Consultation with Tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.
- E. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Natural Resources, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Natural Resources, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring consultation by and between these governments on DNR policies and activities which affect Indian Tribes. This policy formalizes the long-standing

collaborative relationship the DNR and Tribal governments have established in working together to manage the resources of the State of Wisconsin.

A. Annual Meetings

The Secretary of the Department of Natural Resources shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals (who may designate another individual with appropriate authority to attend):

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Forest County Potawatomi Community
- Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- Chairperson, Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Natural Resources
- DNR administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the secretary and Tribal chairpersons and presidents. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of WDNR Tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the accomplishments and effectiveness of the previous year's DNR action plan (see Section IV-C) and to establish mutual goals for the current year's action plan. The agenda shall also include a current DNR organizational chart.

B. Other Meetings

The Secretary of the Department of Natural Resources shall assume the responsibility for scheduling, in consultation with Tribal leadership, additional consultation sessions at his or her discretion. In addition, any Tribal Chairperson or President may request meetings or other consultation with the Secretary or other DNR representatives.

C. Annual Action Plan

The DNR shall establish an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- Programs: A list of programs and services available to Tribes, including an overview of DNR programs and a DNR organizational chart.
- Policy and Program Development: Description of new or potential initiatives, programs, and policies affecting Tribes.

- **Priorities:** Priority issues for resolution in conjunction with the Tribes.
- **Consultation Process:** The procedures to be used to consult with Tribes on existing and new policies and programs that affect the Tribes.
- **Evaluation Process:** The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal, and other aspects of applicable natural resources programs identified in the action plan.

D. Training

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate DNR employees and other individuals. The purpose of this training is to educate DNR employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty and Tribal government and services. The Department of Administration's Division of Intergovernmental Relations will facilitate training and curriculum for appropriate department staff.

V. Resolution of Issues

Throughout any given year, specific issues affecting one or more Tribes and the Department of Natural Resources will arise. These issues may be raised by either a Tribe or the DNR and may occur at various levels within either party. The following process is to be used when such issues arise.

A. Initial Discussion

When an issue arises and an authorized and designated employee of either a Tribe or the DNR contacts an employee of the other entity, they will discuss the issue and attempt to resolve it in a timely manner. If higher level involvement is required, the process described in Section V-B will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Section V-C.

B. Issues Requiring Higher Level Involvement

If higher level involvement is needed, the appropriate issue will be raised to the appropriate level in the DNR and Tribe for resolution. Within the DNR, the Regional Director will facilitate contact with the other staff or management if required. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue. It is recognized that some issues may not be able to be resolved to the satisfaction of all parties.

C. Issues Affecting More Than One Tribe

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the DNR representative will make contact with representatives of all other Tribes. Communication involving all of the potentially affected parties will occur and will be facilitated by a DNR representative.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Subsection B.

VI. Outreach to Tribal Governments by Committees and Workgroups

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for the DNR to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the DNR. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting tribal governments, shall inform tribal Chairpersons/Presidents, in writing, of the proposed policy or program in order to solicit tribal input.

Note: This policy is not intended to conflict with or lessen the consultation requirements under *LCO v. State of Wisconsin*, 775 F. Supp. 321 (W. D. Wis. 1991) and if conflicts arise, the requirements established by *LCO* must be followed.

Appendix A GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

"American Indian Tribal government" means a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a "federally recognized Indian Tribe".

"Consultation" references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

"Cultural awareness and sensitivity" means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

"DNR" or "Department" means the Wisconsin Department of Natural Resources.

"Government-to-government" means communication and dealings between sovereign governments, their agencies and other official entities.

"Sovereign" means a state in which supreme authority is vested.

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